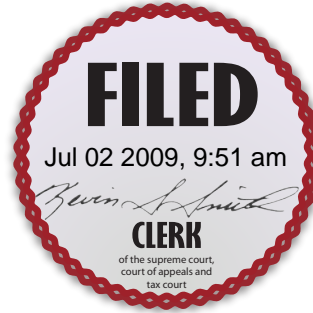


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

VIRGINIA CHEESMAN)
)
Appellant-Defendant,)

vs.)

No. 84A04-0812-CR-713

STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0712-FD-3851
84D03-0607-FD-2159
84D03-0701-FD-188

July 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Virginia Cheesman appeals the sentence imposed following the revocation of her probation.

We affirm.

ISSUE

Whether the trial court abused its discretion by revoking Cheesman's probation and ordering her to serve an eighteen-month suspended sentence.

FACTS

On October 10, 2007, Cheesman pled guilty to three class D felonies.¹ That same day, the trial court imposed a sentence of eighteen months, with six months to be served in the Vigo County Community Corrections day reporting program, followed by twelve months of probation.

On December 11, 2007, the State charged Cheesman with a new class D felony, possession of a controlled substance. Pursuant to a written plea agreement, Cheesman pled guilty to the offense on May 27, 2008, and the trial court dismissed a pending petition to revoke her probation. Consistent with the plea agreement, the trial court terminated Cheesman's commitment to the day reporting program and imposed an eighteen-month sentence, which it ordered suspended to probation, but to be served consecutive to the eighteen-month concurrent sentences for the previous three class D felonies. In addition to Rules of Probation, which Cheesman signed on June 5, 2008,

¹ On July 17, 2006, the State had charged Cheesman with class D felony theft and on January 17, 2007, she was charged with class D felony fraud and class D felony receiving stolen property.

Cheesman was ordered to successfully complete a drug and alcohol treatment program and to submit to random urinalysis.

On June 13, 2008, Cheesman missed a scheduled appointment with the drug and alcohol treatment program; and on June 20, 2008, a petition to revoke her probation was filed. The trial court continued the matter twice in order to give Cheesman an opportunity to comply with the terms of probation. Nevertheless, after missing the initial appointment on June 13, 2008, Cheesman never rescheduled the appointment. Cheesman was arrested on November 5, 2008, for committing another offense.

On November 12, 2008, the State filed another petition to revoke Cheesman's probation for failing to enter and complete the drug and alcohol treatment program and for being charged with possession of a controlled substance. The trial court revoked Cheesman's probation on November 13, 2008, and ordered her to serve the eighteen-month suspended sentence with credit for time served.

DECISION

Cheesman concedes that she violated probation by failing to comply with the drug and alcohol treatment program and that the trial court acted within its discretion by revoking probation; however, she argues that imposing an eighteen-month sentence was excessive and constitutes an abuse of discretion.

Probation is a matter of grace left to a trial court's discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (citing *Sanders v. State*, 825 N.E.2d 952 (Ind. Ct. App. 2005)). The trial court can determine the conditions of probation and may revoke probation if the conditions are violated. *Id.*

(citing Ind. Code § 35-38-2-3). When a defendant has violated a condition of probation, the trial court may impose “all or part of the sentence that was suspended at the time of initial sentencing.” I. C. § 35-38-2-3(g).

We apply an abuse of discretion standard when reviewing a sentence imposed for a probation violation. *Prewitt*, 878 N.E.2d at 188. A trial court has abused its discretion when its decision is “clearly against the logic and effect of the facts and circumstances.” *Id.* (citing *Guillen v. State*, 829 N.E.2d 142 (Ind. Ct. App. 2005)).

Cheesman claims that her only violation was a single missed appointment with the drug and alcohol treatment program. This is an oversimplification. According to the testimony of the probation officer, by failing to reschedule the initial missed appointment, Cheesman necessarily failed to attend and participate in the regular sessions that completion of the drug and alcohol program entails. This evidence supports the reasonable inference that Cheesman failed or refused to take advantage of the opportunity to avoid incarceration and to receive substance abuse treatment. Her protracted non-compliance with the terms of probation indicates a reckless disregard of the trial court’s authority and a lack of respect for the law.

The trial court acted within its discretion by ordering Cheesman to serve the entire suspended sentence.² Under Indiana Code Section 35-38-2-3, the trial court was authorized to order the execution of Cheesman’s entire suspended sentence. Considering her repeated violations of probation and missed opportunities to resume compliance, we

² We note that the trial court said it would consider revoking or reducing Cheesman’s sentence upon her successful completion of a drug abuse counseling program while incarcerated.

do not find that the trial court's decision is "clearly against the logic and effect of the facts and circumstances." *Prewitt*, 878 N.E.2d at 188.

Cheesman also asks this court to review the trial court's decision "in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The Supreme Court of Indiana held in *Prewitt* that Appellate Rule 7(B) is not the correct standard for reviewing a sentence imposed for a probation violation. 878 N.E.2d at 188. The correct standard, as expressly stated in *Prewitt*, is the abuse of discretion standard. *Id.* We have already found that the trial court did not abuse its discretion by ordering the execution of Cheesman's sentence.

Affirmed.

BAILEY, J., and ROBB, J., concur.